

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CHARLES and PATRICIA
HENNINGSEN**
Facility #67189
Section 03, Highland Township
Palo Alto County, Iowa
Ruthven, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2014-AFO-19

TO: Dan Henningsen
3398 370th Ave
Ruthven, IA 51358

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Charles Henningsen and Patricia Henningsen (Henningsens) for the purpose of resolving the failure to timely submit a Manure Management Plan (MMP) update as well as the annual compliance fee of \$0.15 per animal unit capacity for Henningsens' animal feeding operation located in Palo Alto County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to Technical Requirements:

Londa Witte, DNR Field Office 3
Iowa Department of Natural Resources
1901 N Grand Ave.
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to Legal Requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of Penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B,

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Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Henningsens own a 960 animal unit confinement facility. The facility is located at 3398 370th Street, Ruthven, Iowa (Section 3, Highland Township, Palo Alto County). The Palo Alto Assessor's Office lists the Henningsens as the owners of the property where the facility is located. The Henningsens filed the original MMP for the facility on April 13, 2012. The annual MMP update deadline was established as April 1 of each calendar year.

2. On April 11, 2013, DNR Field Office 3 issued a Notice of Violation letter to the Henningsens for failing to submit the MMP update and fees by April 1, 2013. The MMP update and fees were submitted on April 30, 2013.

3. On April 10, 2014, DNR Field Office 3 issued a Notice of Violation letter to the Henningsens' son, Dan. Dan is listed as the contact for the site. The letter was issued to the Henningsens for failing to submit the MMP update and compliance fee for 2013 by April 1, 2014.

4. On May 9, 2014, Londa Witte, DNR Field Office 3, spoke to Dan Henningsen on the telephone and reminded him of the overdue MMP update and fee. Mr. Henningsen stated that he would submit the MMP update and fee by May 16, 2014.

5. On June 5, 2014, DNR Field Office 3 issued a Notice of Referral to the Henningsens for failing to submit a timely MMP update and fee. The letter informed the Henningsens that the matter was being referred for further enforcement.

6. On June 9, 2014, Charles Henningsen contacted Ms. Witte acknowledging receipt of the Notice of Referral and asked what should be submitted. On June 12, 2014, DNR Field Office 3 received the Henningsens' updated MMP and fee.

IV. CONCLUSIONS OF LAW

1. Iowa Code sections 459.12(13) and 567 IAC 65.16(3)"b" and "c" require an owner of a confinement feeding operation who is required to submit a MMP to submit a complete updated MMP and a compliance fee on an annual basis to the DNR. The 2014 MMP update and fee for Henningsens were due April 1, 2014. The MMP update and fee were not submitted to the DNR until June 13, 2014. The above-mentioned facts indicate violations of this provision.

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V. ORDER

THEREFORE, the DNR orders and the Henningsens agree to do the following:

1. The Henningsens shall timely submit future MMP updates and compliance fees; and
2. The Henningsens shall pay an administrative penalty in the amount of \$2,000.00 within 30 days from the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of this administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – The Henningsens' failure to timely submit a complete MMP and compliance fee allowed the Henningsens to save time and money. The Henningsens have gained an economic benefit from the delay in the submittal. It is estimated that the Henningsens have gained an economic benefit of at least \$50.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update is a crucial aspect of the DNR's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. The Henningsens' facility has a capacity of 960 animal units and environmental harm is likely to occur if the manure is not applied properly. Additionally, DNR Field Office

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3 has expended labor and expenses in informing Henningsens of the requirements. Therefore, \$1,500.00 is assessed for this factor.

Culpability – The Henningsens have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, \$450.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the Henningsens. For that reason the Henningsens waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 19th day of
September, 2014.

Charles Henningsen
CHARLES HENNINGSEN

Dated this 15th day of
September, 2014.

Patricia Henningsen
PATRICIA HENNINGSEN

Dated this 15th day of
September, 2014.

Facility #67189; Kelli Book, DNR Field Office 3, EPA, VIII.C.2



TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

RECEIVED
STATE OF IOWA
SEP 17 2014
DEPARTMENT OF NATURAL RESOURCES
Director's Office
CHUCK GIPP, DIRECTOR

August 21, 2014

Dan Henningsen
3398 370th Ave
Ruthven, IA 51358

Dear Mr. Henningsen,

Enclosed is the revised administrative consent order we discussed on the telephone yesterday. Please review and if acceptable, have the consent order signed and returned to me at the address provided in the consent order. The penalty payment can be submitted with the consent order or you may wait until you have received the signed consent order from the Director. Please also note that your parents will need to sign the consent order since they are the listed owners from the county assessor.

If you have any questions please contact me at (515) 725-9572 or at kelli.book@dnr.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Book".

Kelli Book
Attorney for the Department

CC: DNR Field Office 3 (w/enclosure)